

I. FEE IMPOSITION

Fee imposed on persons engaged in WHOLESALE SALES

A litter control fee at the rate of 3/100 of 1 percent (.0003) is imposed on gross receipts from wholesale sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. "Wholesale sales" are sales for resale.

Fee imposed on persons engaged in RETAIL SALES

A litter control fee at the rate of 2.25/100 of 1 percent (.000225) is imposed on gross receipts from retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. "Retail sales" are sales for ultimate consumption or any purpose other than resale.

Examples of Transactions

1. The gross receipts from the sale of a motor vehicle battery from a manufacturer to a wholesaler - not subject to the fee - a motor vehicle battery is not one of the fifteen litter-generating product categories.
2. The gross receipts from the sale of a motor vehicle battery in a cardboard box from a retailer to a retail consumer - not subject to the fee - a motor vehicle battery is not a litter-generating product - the packaging is irrelevant if the product sold is not a litter-generating product.
3. The gross receipts from the sale of a motor vehicle tire from a manufacturer to a wholesaler - subject to the fee - a motor vehicle tire is a litter-generating product.
4. The gross receipts from the sale of a motor vehicle tire from a manufacturer to a wholesaler with the manufacturer always properly disposing of all his litter and waste products - subject to the fee - the motor vehicle tire is a litter-generating product - the proper litter and waste disposal methods of the manufacturer are irrelevant.
5. The gross receipts from the sale of a motor vehicle tire from a wholesaler to a wholesaler - not subject to the fee - a motor vehicle tire is a litter-generating product but wholesaler to wholesaler sales are deductible.
6. The gross receipts from the sale of a motor vehicle tire from a wholesaler to a retailer - subject to the fee - a motor vehicle tire is a litter-generating product - no deduction for wholesaler to retailer sales - it is irrelevant that the tax was also paid by the manufacturer on his sale of the tire to the wholesaler as there is no deduction for sales of products previously subjected to the fee.
7. The gross receipts from the sale of a motor vehicle tire from a retailer to a retail consumer - subject to the fee - a motor vehicle tire is a litter-generating product. The retailer would not be required to file and pay the fee if his annual litter-generating product sales are less than \$500,000.
8. The gross receipts from the sale of a motor vehicle which includes tires as component parts of the vehicle from a retailer to a retail consumer - not subject to the fee - a motor vehicle is not a litter-generating product - the sale of motor vehicle tires in this case is incidental to the sale of the vehicle.
9. The gross receipts from the sale of a motor vehicle tire by an out-of-state manufacturer to a NJ wholesaler - subject to the fee - a motor vehicle tire is a litter-generating product - the out-of-state manufacturer is subject to the fee if he has nexus with New Jersey.

II. DEFINITIONS

"Distributor" means a wholesaler. The "wholesaler" or "distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales.

"Engaged in business in the state" means the participation in any commercial activities in New Jersey with the object of gain, benefit or advantage to the feepayer or to another person or class, directly or indirectly.

"Gross receipts" means all receipts, of whatever kind and in whatever form, derived from sales of litter-generating products, without any deduction therefrom on account of any item of cost, expense or loss. Gross receipts are reportable on the accrual basis and not as collections are made. New Jersey sales and use tax collections are not includible as gross receipts.

"Manufacturer" means any person who engages in the making, fabricating or processing of any litter-generating product regardless of whether the manufacturing activity occurs within or outside New Jersey. Farmers, ranchers, fishermen and those engaged in similar occupations exclusively involved in the growing, harvesting and producing of raw, unprocessed food products for human or animal consumption are not deemed to be manufacturers.

"Retailer" means every person engaged in the business of selling or exchanging goods for cash or barter or any consideration on the presumption that the purchaser of such goods has acquired the same for ultimate consumption or use. The "retailer" designation is limited to those persons primarily engaged in the business of making retail sales. "Primarily" means that more than 50 percent of gross receipts from all sales are retail sales. "Retailer" does not include (1) the owner or operator of a restaurant with less than 10% in annual sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or (2) the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises; or (3) those persons that make an isolated or occasional sale of a litter-generating product who are not regularly engaged in the business of making sales at retail where such litter-generating product was obtained by the person making the sale, through purchase or otherwise, for his own use. "Principal activity" means more than fifty percent (50%) of the restaurant's food and beverage sales.

"Retail sales" are for ultimate consumption or any purpose other than resale.

"Sale" means any transfer of title or possession or both, exchange, or barter of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor. "Sale" does not include a rental or lease transaction.

"Sales within the State" means all retail sales and all wholesale sales by taxpayers engaged in business within New Jersey of litter-generating products for use and consumption within New Jersey. It shall be presumed that all sales of litter-generating products sold within the State are for use and consumption within the State unless the taxpayer shows that the products are shipped out-of-State for out-of-State use. Additionally, "sales within the State" or "sold within New Jersey" means all sales of litter-generating products from points outside New Jersey having a New Jersey destination made by every manufacturer, wholesaler, distributor and retailer having nexus with New Jersey without regard to the state in which title passes or delivery takes place.

"Wholesaler" means any person who sells litter-generating products for the purpose of resale to another wholesaler or retailer or both, but does not include manufacturers. The "wholesaler" or "distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales.

"Wholesale sales" are sales for resale.

III. LITTER-GENERATING PRODUCTS

"Litter-generating products" means the fifteen below-listed categories of products which meet any of the following conditions:

- (a) They are produced, distributed, or purchased in disposable containers, packages or wrappings; or
- (b) They are not usually sold in packages, containers or wrappings but are commonly discarded in public places; or
- (c) They are of an unsightly or unsanitary nature commonly thrown, dropped, discarded, placed or deposited by a person on public property, or on private property not owned by him.

"Commonly discarded" is defined very broadly to mean disposed of with sufficient frequency so that if the below listed products or their containers, packaging or wrapping when considered as a class, irrespective of the specific marketing or disposal methods of an individual fee-payer, are disposed of with sufficient frequency in this manner by the business community or the general public they qualify as litter-generating products.

It is presumed that all products in the below-listed categories satisfy at least one of the above conditions and qualify as a litter-generating product.

1. Beer and other malt beverages - means beer, lager beer, ale, stout, porter and all similar fermented malt beverages having an alcoholic content of 1/2 of 1 percent or more by volume.

2. Cigarettes and tobacco products

Cigarettes means any roll for smoking made wholly or in part of tobacco, or any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapping or cover of which is made of paper or any substance or material excepting tobacco.

Tobacco products means all products containing tobacco, except cigarettes, including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, and other products containing tobacco, including snuff.

3. Cleaning agents and toiletries

Cleaning agents means all soaps, detergents, solvents, or other cleaning substances used for cleaning buildings, places, persons, animals, or other things.

Toiletries means all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming.

4. Distilled spirits - means any beverage which contains alcohol obtained by distillation.

5. Food for human or pet consumption

Food for human consumption - means any substance, the chief general use of which is for human nourishment. It includes sales of all food by food manufacturers, wholesalers and retailers. Certain restaurants described in N.J.A.C. 18:38-5.1(b) are excluded as retailers of food.

Food for human (or pet) consumption includes all food additives, spices, seasonings, food flavorings, food extracts, food derivatives, food chemicals, vitamins, minerals and any other ingredient intended to be added to a food product.

Food for pet consumption means any substance the chief general use of which is for pet nourishment.

"Pet" means any domesticated animal which is not a productive animal. "Productive animal" means an animal which is raised for its meat, for the edible products which it produces, for its fur, wool or skin, for breeding purposes or for farm work. The following are examples of productive animals: dairy cows, poultry, swine, sheep, food fish, rabbits, and other game animals raised for meat or fur, chinchillas and minks; also cows and bulls held for breeding purposes, stallions, brood mares and plow horses.

6. Glass containers sold as such - means articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves, and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state. This category includes all glass containers sold empty and intended to be used for packaging purposes by industry, e.g., glass jars, glass bottles, glass jugs, etc. This category does not include glass containers sold empty to an ultimate consumer who does not intend to either resell the container as such or use it to transfer property to another in the course of business, e.g., beverage glasses, glass bowls, glass vases, pottery, etc. sold at retail to a retail consumer.

7. Groceries - means all nonperishable edible products, except drugs, sold by persons in a place of business primarily engaged in selling nonprepared food for off premises consumption. Food sold in such

establishments and not included in this category would be included in the "Food for human or pet consumption" category.

8. Metal containers sold as such - means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver or like substances and any alloys thereof and which can be, or are, used to hold other things within themselves and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state. This category includes all metal containers sold empty and intended to be used for packaging purposes by industry, e.g., metal cans, metal drums, metal boxes, etc. This category does not include metal containers sold empty to an ultimate consumer who does not intend to either resell the containers as such or use them to transfer property to another in the course of business, e.g., metal trash cans or metal bowls, vessels, buckets, pails, etc., sold at retail to a retail consumer.
9. Motor vehicle tires - means all tires, regardless of composition, designed for use on any vehicle propelled otherwise than by muscular power including motorcycles, motor driven lawn and garden equipment and construction equipment and including trailers, semi-trailers, house trailers, or any other type of vehicle drawn by a motor-driven vehicle.

10. Newsprint and magazine paper stock

Newsprint means machine-finished paper made from ground wood and chemical pulp or recycled paper in whole or in part as commonly used to manufacture newspapers but shall not mean newspapers in their published form.

Magazine paper stock means the paper commonly used to manufacture periodical publications but does not include magazines in their published form.

11. Drugstore sundry products - means all products, goods, or articles, except newspapers, magazines and drugs, whether prescription or nonprescription, sold by persons in a place of business selling drugs at retail.

Drugs means substances or products appearing in the latest listing of United States Pharmacopoeia or National Formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

Place of business - for purposes of this category means any location, department or division even though it be a part of a larger business physically, operationally, and in its books and records. Thus, a department store which consists of a drug department and a clothing department, each with its own space and having separate employees, cash registers and accounting records would not be subject to the litter control tax on sales of its clothing department merely because it was located in the same building under the same ownership as the drug department.

12. Paper products and household paper - means all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers and magazines, and does not include roll stock produced by paper product manufacturers and wood pulp, sold as such. This category includes paper office supplies, stationary, cards, labels, advertising flyers, brochures, pamphlets, greeting cards, calendars, posters, books, booklets, catalogs, programs, envelopes, business forms and all other paper products.

Newspaper is a printed publication issued at regular intervals, usually daily or weekly, and which contains news, editorial comment, feature articles and advertisements.

Magazine is a printed publication issued periodically, at least four times a year and is usually bound with a paper cover and contains many and miscellaneous articles on a variety of topics.

13. Plastic or fiber containers made of synthetic material and sold as such- means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials, but not including any container which is routinely reused, has a useful life of more than one year and is ordinarily sold empty at retail. It includes containers made of paper, pasteboard, or cardboard in which the container material consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making

or building up by a composition or union of simple parts or elements as distinguished from the process of extraction or refinement. This category includes all plastic or fiber containers sold empty and intended to be used for packaging purposes by industry, e.g., plastic cartons, plastic bottles, plastic jugs, fiber sacks or bags, cardboard boxes, etc. This category does not include plastic or fiber containers sold empty to an ultimate consumer who does not intend to either resell the container as such or use it to transfer property to another in the course of business, e.g., plastic trash receptacles, plastic baskets, pots or bowls, etc. sold at retail to a retail consumer.

14. Soft Drinks and carbonated waters- means all beverages, whether carbonated or noncarbonated, except alcoholic beverages, including fruit juices, milk, carbonated water and all mixtures or dilutions of nonalcoholic beverages, but does not include noncarbonated water.
15. Wine- means all wines whether known as dry wines, sweet wines, still wines or fortified wines and any artificial or imitation wine or compound sold as wine, and any fruit juice containing $\frac{1}{2}$ of 1 percent or more of alcohol by volume, and any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which beverage contains $\frac{1}{2}$ of 1 percent or more of alcohol by volume, including vermouth and cider.

IV. FEE COMPUTATION

Litter control fee liability may be computed by any manufacturer, wholesaler, distributor or retailer subject to the fee using any one of three fee computation methods: general method, total sales method, or percentage of sales method.

1. General method- the fee is computed using the general method by applying the fee rate of .0003 to gross receipts from all wholesale sales of litter-generating products within New Jersey and applying the fee rate of .000225 to gross receipts from all retail sales of litter-generating products within New Jersey sold during the calendar year.

Use of the general method requires the feepayer to separately account for his sales of each of the fifteen categories of litter-generating products to properly substantiate his gross receipts subject to the fee.

2. Total sales method- the fee is computed using the total sales method by applying the fee rate of .0003 to gross receipts from all wholesale sales of all products, both litter-generating and non litter-generating, within New Jersey and applying the fee rate of .000225 to gross receipts from all retail sales of all products, both litter-generating and non litter-generating, within New Jersey sold during the calendar year.

EXAMPLE: The XYZ Liquor Store is a retail establishment in New Jersey with total retail sales of \$1,000,000 for all products sold in New Jersey for the calendar year. The owner of the XYZ store having reviewed the list of litter-generating products is aware that most, if not all, of his sales involve litter-generating products and, therefore, elects to pay the fee using the Total Sales Method of computation.

His total fee due for the calendar year would be $\$1,000,000 \times .000225 = \225 tax due. The low amount of this fee liability - \$225- supports his use of this method rather than separately accounting for sales of litter-generating products and using the general method of computation.

Use of the total sales method requires the feepayer to account for total sales of all products in New Jersey but does not require separate accounting for sales of litter-generating products

3. Percentage of sales method- the fee is computed using the percentage of sales method by applying the fee rate of .0003 to that proportionate amount of gross receipts from wholesale sales of all products within New Jersey which properly reflects wholesale sales of litter-generating products within New Jersey and applying the rate of .000225 to that proportionate amount of gross receipts from retail sales of all products within New Jersey which properly reflects retail sales of litter-generating products within New Jersey sold during the calendar year.

EXAMPLE: The ABC Auto Supply Store is a retail establishment in New Jersey with total retail sales of \$2,000,000 for all products sold in New Jersey for the calendar year. ABC's owner, upon review of the list

of litter-generating products, is aware that while his store does sell many litter-generating products, such as motor vehicle tires, cleaning agents, paper products, etc., he also sells many products not listed. He may, therefore, elect to compute his fee due using the Percentage of Sales Method and relieve him of much of the expense of recordkeeping needed for the General Method of computation. He can substantiate that the proper proportionate amount of his total sales that can be attributed to sales of litter-generating products is \$500,000. His total fee due for the calendar year would be $\$500,000 \times .000225 = \112.50 tax due.

The percentages of sales must reflect the portion of total sales and total wholesale sales represented by sales of litter-generating products in those sales categories. The percentages must be determined from actual sales data from a sample period of at least one month within the return period which is representative of the feepayer's sales activity during the entire period covered by the return. This percentage is computed by dividing the gross receipts from sales of litter-generating products by the gross receipts from total sales for the sample period.

EXAMPLE: This sampling procedure should be applied to both retail sales and wholesale sales.

1. Select a sample period of one month that is indicative of your sales of litter-generating products for the entire calendar year.
2. Review all sales invoices for that same period.
3. Distinguish between litter-generating product sales and non litter-generating product sales for the sample period.
4. Total all litter-generating product sales and divide litter-generating product sales by total sales for the sample period. This will result in your proper proportionate amount of total sales that can be attributed to litter-generating product sales expressed as a percentage.
5. Multiply the total gross sales of all products for the entire calendar year by this percentage to get the proper proportionate amount of total sales attributed to sales of litter-generating products.
6. Multiply the product obtained in step 5 by the proper fee rate to determine the fee due for the calendar year.

A feepayer electing to determine his litter control fee liability by using the percentage of sales method would not be required to separately account for his total sales of litter-generating products. However, he would be required to maintain such records to substantiate the proportionate amounts used.

Optional fee rate use- The fee may be computed by using the wholesale fee rate for all sales subject to the fee rather than separately accounting for retail sales and wholesale sales and using the applicable fee rate

V. EXCLUSIONS AND DEDUCTIONS

Exclusions

Any retailer with less than \$500,000 in annual gross receipts from all sales, both retail sales and wholesale sales, of litter-generating products is excluded from filing and payment of the fee for any year in which such amount is not met. When annual gross receipts from all sales of litter-generating products are \$500,000 or more, a retailer is subject to the fee on total annual gross receipts from all sales of litter-generating products including the initial \$500,000 of sales of such products. For purposes of this section, the "retailer" designation is limited to those persons including manufacturers primarily engaged in the business of making retail sales. "Primarily" means that more than 50 percent of gross receipts from all sales are retail sales.

Any owner or operator of a restaurant with less than 10% in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant or any owner or operator of a restaurant, the principal activity of which (as defined in the "Retailer" definition), consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises is excluded from filing and payment of the fee for any year in which such conditions are met.

Deductions

1. A sale of a litter-generating product by a wholesaler or distributor to another wholesaler or distributor. For purposes of this section, the "wholesaler" or "distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales. The designation "wholesaler" or "distributor" does not include a manufacturer. A manufacturer, regardless of his type of sales, wholesale or retail, and regardless of whether his manufacturing activity occurs within New Jersey or outside the State, cannot qualify for this deduction. Wholesaler to retailer sales also do not qualify for this deduction.
2. A sale of a litter-generating product by a company to another company owned wholly by the same individuals or companies.
3. A sale of a litter-generating product by a wholesaler or distributor owned cooperatively by retailers to those retailers.

VI. REGISTRATION

Any person opening a new place of business is required to register with the Division of Revenue on Form NJ-REG, Business Registration, at least 15 days prior to the commencement or opening of such business.

Any person who is registered under any tax law administered by the Division of Taxation, e.g., New Jersey Sales and Use tax, New Jersey Corporation Business tax, etc., or who is subject to and files returns under any of these laws is not required to separately register for the Litter Control fee.

VII. FILING AND FEE PAYMENT

Every person subject to the Litter Control fee is required to file, under oath, a Litter Control Fee return, Form LF-5, and pay the full amount of fee due thereon, on or before March 15 of each year for the preceding calendar year's fee liability.

VIII. RECORD RETENTION

All records and other supporting documentation used in completing the LF-5 Litter Control Fee return, must be retained and made available for examination on request by the Division of Taxation or its authorized representatives for at least five years following the filing of a return.